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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF WASHINGTON

T.S. MCGREGOR, CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:)
JONES, LARRY D.,)
Debtor.)

No. 97-05293-W13

MEMORANDUM DECISION

THIS MATTER came on for hearing before the Honorable Patricia C. Williams on February 20, 1998 for a valuation hearing to determine the value of the Northland Credit Union collateral. Joseph Harkrader appeared on behalf of the Chapter 13 Trustee; Gregory Heline appeared on behalf of the debtor; and Theodore Schott appeared on behalf of Northland Credit Union. The court reviewed the files and records herein, heard argument of counsel and was fully advised in the premises. The court now enters its memorandum decision.

Debtors in this Chapter 13 proceeding own a 1992 all-wheel drive Dodge Caravan. The bankruptcy was commenced on September 25, 1997 and in their plan the debtors value the vehicle at \$9,400. The lienholder Northland Credit Union was owed, as of the date of filing, \$13,109.13. An objection to claim has been filed by the debtor and an objection to the Plan has been filed by the creditor. The valuation hearing was held on February 20, 1998 and both parties agreed that the value was to be determined as of the date of the commencement of the bankruptcy proceeding.

MEMORANDUM DECISION - 1

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1 The debtor, Mr. Jones, testified that the value referenced in
2 the Plan, i.e. \$9,400, was based solely upon the wholesale NADA
3 blue book for September, 1997 after appropriate additions and
4 deductions for accessories and mileage. Mr. Bartlett, a self-
5 employed vehicle appraiser, testified on behalf of the creditor and
6 was qualified as an expert. He opined that the automobile had a
7 value of \$11,800. Mr. Bartlett's written appraisal was based upon
8 an inspection of the vehicle and sales of comparable vehicles.

9 The ultimate question presented was the appropriate method to
10 value vehicles in Chapter 13 consumer proceedings in the aftermath
11 of *Associates Commercial Corp. v. Rash*, 117 S.Ct. 1879 (1997). In
12 that case, the Supreme Court held that the allowed amount of a
13 secured claim under § 506(a) ". . . is the price a willing buyer in
14 the debtor's trade, business or situation would pay to obtain like
15 property from a willing seller." The Supreme Court referred to
16 this as the "replacement value" standard, but Footnote No. 2 also
17 stated that ". . . Our use of the term replacement value is
18 consistent with the Ninth Circuit's understanding of the meaning of
19 fair market value" To those of us in the Ninth Circuit,
20 "replacement value" may be a new term but it has the same meaning
21 as our old friend "fair market value," i.e. what a willing buyer
22 would pay a willing seller.

23 Bankruptcy courts throughout the Ninth Circuit regularly value
24 assets. The relevant market is surveyed, the asset is inspected,
25 and comparable sales are found. Nothing in *Rash* has changed this
26 process. The relevant market for a debtor which is an automobile
27 dealer or has regular access to the wholesale dealer market would
28 be the wholesale market. For the average consumer Chapter 13

1 debtor, the relevant market is the retail market. The NADA or
2 Kelly blue book reflects the largest portion of the market which is
3 sales by used automobile dealers. However, private sales are also
4 part of the market. Used vehicles are commonly sold to ultimate
5 consumers by private individuals and businesses. Local newspapers
6 daily advertise such sales and area publications such as Wheels
7 Deals are devoted primarily to advertising and facilitating such
8 sales.

9 In order to determine the fair market value of any asset, be
10 it real estate, heavy equipment or a vehicle, the unique
11 characteristics and condition of the asset must be determined.
12 Through this process, the fair market value is determined. Not
13 only *Rash*, but the cases interpreting it are consistent with this
14 process.

15 Since *Rash*, Judge Small, in the Bankruptcy Court for the
16 Eastern District of North Carolina, has concluded that nothing in
17 the *Rash* decision precludes it from continuing to utilize the NADA
18 retail blue book as the starting point to determine the allowed
19 secured claim for a consumer automobile.

20 The starting point for valuation of an automobile to be
21 retained by a Chapter 13 debtor has been the NADA retail
22 blue book with adjustments agreed to by the debtor, the
23 secured creditor and the Chapter 13 trustee. If the
24 parties do not agree, a hearing is held and the court
determines the value using a replacement standard which
in most cases is retail value. That practice has worked
and will continue in this district.

25 *In re Russell*, 211 B.R. 12 (E.D. N.C. 1997).

26 Judge Killian, in the Bankruptcy Court in the Northern
27 District of Florida, however, concluded that nothing in *Rash* is
28 inconsistent with its continued use of the average of the wholesale

1 and retail NADA values as a starting point. *In re Franklin*, 213
2 B.R. 781 (N.D. Fla. 1997). In *Franklin*, the Florida court
3 concluded that by expressly recognizing the various components
4 which determine retail price such as warranties, reconditioning,
5 etc., the Supreme Court has allowed bankruptcy courts to continue
6 to measure replacement value at some point between wholesale and
7 retail.

8 The Oklahoma Bankruptcy Court in *In re Younger*, 1998 WL 13681
9 (Bankr. W.D. Okla. 1998) thoroughly analyzed not only *Rash* but the
10 above-referenced cases and concluded that nothing in *Rash* precluded
11 it from utilizing the same approach it had taken before *Rash*. That
12 approach was to average the wholesale and retail NADA values and
13 use that as a starting point to determine the allowed secured
14 claim. After determining the appropriate "starting point," all of
15 these courts then examined the unique characteristics of the
16 vehicle in question.

17 *In re McElroy*, 210 B.R. 833 (D. Or. 1997) was the only post-
18 *Rash* decision reported in the Ninth Circuit. In that decision, the
19 court recognized that the term "replacement value" as used in *Rash*
20 is equivalent to the term "fair market value", i.e. the price that
21 a willing buyer would pay a willing seller. The determination of
22 value in that case was based upon a comprehensive evidentiary
23 hearing with expert testimony.

24 This approach was heavily criticized by the Oklahoma court in
25 *Younger*. Although conceding that requiring an evidentiary hearing
26 with expert testimony would result in accurate valuation, the
27 *Younger* court felt that such requirements were impracticable and
28 "virtually impossible" to implement.

1 This court concludes that the appropriate methodology to
2 determine the fair market value of vehicles being retained by
3 consumer Chapter 13 debtors falls somewhere between the extensive
4 evidentiary hearing required in *In re McElroy* and the strict
5 mathematical calculations based upon NADA blue book used in other
6 jurisdictions.

7 First, the NADA or Kelly blue book retail values are relevant
8 to determine fair market or replacement value. The market for used
9 vehicles which is available to consumer debtors is largely, but not
10 entirely, dealers engaged in retail sales. These blue books are
11 used daily by both purchasers and sellers and are reliable
12 indicators of market price. All of the cases cited above allowed
13 blue books as reliable evidence of value.

14 Secondly, as noted above, the market available to consumer
15 debtors also consists of "private sales", i.e. sales by individuals
16 or businesses of their own used vehicles. In the *Younger* case, one
17 of the expert witnesses used two private sales as well as a sale by
18 a dealer to determine his opinion of value. As was discussed in
19 the *Younger* case, advertisements of sales prices, either by dealers
20 or private parties, are relevant, but in order to most credibly
21 determine fair market value, ". . . actual sales prices should be
22 used."

23 Both *Rash* and traditional analysis of fair market values are
24 based upon current area market prices for "like property." An
25 opinion of value which is not based upon a physical examination of
26 the vehicle at issue, is of questionable validity. The vehicle at
27 issue may be in poor or excellent condition or may have defects.
28 "Like property" requires the actual condition of the vehicle at

1 issue to be considered. As stated in *In re Younger*, the weight of
2 testimony is adversely affected if the witness has not inspected
3 the automobile in question.

4 Much has been made of a single sentence in a footnote to the
5 *Rash* decision to the effect that a retail value may not be
6 replacement value unless certain dealer added items such as
7 warranties and reconditioning are deducted. However, by
8 considering as part of the market the private sales where such
9 items are not added, much of the Supreme Court's concern is
10 eliminated. More importantly, the physical inspection and
11 comparable sales approach result in the adjustments contemplated by
12 the *Rash* court being made. In fact, this is exactly what occurred
13 in the *Franklin* case where the cost of reconditioning the vehicle
14 for sale was deducted from the value. Also, in *McElory*, the court
15 deducted the cost of certain necessary repairs in determining
16 value. There is nothing in *Rash* which mandates a different
17 approach or which requires this or any court to determine profit
18 margins and operation costs of automobile dealers to determine the
19 fair market value of a vehicle.

20 APPLICATION TO FACTS

21 As the debtor primarily relied upon wholesale NADA value, his
22 value is too low. This consumer debtor has no access to the
23 wholesale market. The relevant market for this debtor is the
24 retail market. Mr. Bartlett testified that he used the NADA only
25 fleetingly to determine "where I am at." He does not rely primarily
26 upon the NADA as a physical appraisal is "better." Value is based
27 upon condition, mileage, any mechanical problems and the local
28 market. He inspected the vehicle and relied upon advertisements

1 for 1992 Dodge Caravans on the Internet, in Wheels Deals and in
2 local newspapers. In his opinion, the relevant market for this
3 particular vehicle is not the entire Pacific Northwest but the
4 Inland Empire. He did, however, gather information from not only
5 the Pacific Northwest but other areas. According to Mr. Bartlett,
6 in late summer through early winter in the Inland Empire, 4-wheel
7 drive or all-wheel vehicles sell for significantly more than NADA
8 and significantly more than in some areas of the Pacific Northwest.
9 He testified that for a vehicle of this type, \$2,000 should be
10 added to the NADA retail value. The debtor used the standard NADA
11 add-on of \$1,200.

12 The NADA categorizes vehicles by type and then determines a
13 deduction for "high mileage." Mr. Bartlett determined this was a
14 category II vehicle which should have a high mileage deduction of
15 \$500. The debtor was unable to articulate his deduction for high
16 mileage, but indicated some deduction would be appropriate.
17 Mr. Bartlett testified that in the market there are five classes of
18 condition from Class 1 for "like new" to Class 5 for "bad." He
19 placed this vehicle between average and high average so made no
20 deduction or addition for condition. He did deduct for the
21 condition of the tires and certain costs of preparing the vehicle
22 for sale. This resulted in his opinion that the fair market or
23 replacement value of the vehicle is \$11,800.

24 There was considerable testimony regarding Mr. Bartlett's
25 comparable sale as he relied upon advertised prices for that sale.
26 His primary comparable sale was a sale by a private party, but the
27 seller only indicated that the sales price was "close" to the
28 advertised price. Mr. Bartlett testified that in his experience

1 this would mean "\$400 to \$500" less than the advertised price.
2 Because Mr. Bartlett's primary comparable sale was based upon an
3 advertised price rather than an actual sale price, an adjustment to
4 his opinion of value must be made. Using Mr. Bartlett's estimate,
5 I find that the fair market or replacement value of the 1992 Dodge
6 Caravan is \$11,300.

7 The Clerk of Court is directed to file this Order and provide
8 copies to counsel.

9 DATED this 9th day of March, 1998.

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12 PATRICIA C. WILLIAMS, Bankruptcy Judge
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